9th September, 1933. The beneficiaries under Mohammedan Law are the applicants and the deceased's seven children three of whom are still infants. The only asset remaining in the estate is an undivided half share in two pieces of land in the Changi district of Singapore having a total area of under four acres. It is to the interest of the beneficiaries that this property should be realised as they cannot reasonably enjoy their interests as tenants in common of an undivided half share, such interests being fractional.

The question arises as to the proper procedure to be adopted. It has been said that when an executor or administrator has paid all the debts and administration expenses the administration is at an end and he becomes a trustee of the deceased's effects *in specie* for the beneficiaries or next of kin as the case may be (*In re Ponder*[2]). On the other hand it has been decided in an Irish case *In re Norwood & Blalis Contract*[1] that the executors' or administrators' powers of disposal continue for the purpose of distribution also, and there can be no doubt that in this Colony this view has been adopted, and grants *de bonis non* have frequently been made many years after all the debts and administration expenses have been paid, and merely for the purpose of facilitating distribution. In the case of small estates this practice has much to recommend it. I do not say that this is the only procedure that can be adopted. Where an administrator has completed the administration and becomes invested with the character of trustee, an application under the Trustees Ordinance could clearly be made. In the present case the administrator's powers of disposal can be regarded as subsisting, subject to the provisions of s. 35 sub-s. 2 of the Conveyancing and Law of Property Ordinance.

In view of this section, as more than six years have elapsed since the death of the intestate, no sale can be effected by the administrator without the sanction of the Court, and the present application is made to obtain such sanction. The sanction of the Court is not granted as a matter of course or upon an *ex parte* application, and one or more of the beneficiaries should always be made respondents to the summons. The Court may require to be satisfied as to the reasons for the delay, and will in every case where infants are interested require an affidavit of value so as to ensure that the property is not being sold at an undervalue.

If, however, the Court is satisfied on these points the sanction will be given. The resulting sale will not be a sale by the Court, but a sale by the administrator with the sanction of the Court. Order 48 r. 2 (sale altogether out of Court) has no application, and accordingly the order authorising the administrator to exercise his powers does not require the declaration referred to in O. 48 r. 3.

In the case before me the only offer to purchase is from three of the adult beneficiaries who have offered $1,000, the valuation being $1,200. If the offer is increased to the amount of the valuation, the necessary sanction can be given.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

MANNING, J.

July 12, 1940.

IN RE THE WILL OF M. MOHAMED HANIFFA DECEASED.

ABDUL JABBAR

v.

M. MOHAMED ABUBACKER.

[SINGAPORE ORIGINATING SUMMONS No. 71 of 1940]

Will — Construction — Bequests — Mohammedan Law.

The testator was a Mohammedan of the Hanafi Sect domicile in India. He bequeathed legacies of monthly payments to two of the persons who were his heirs according to Mohammedan Law. He also bequeathed movable property, namely, the profits of his business, to his trustee the same to be divided equally between his wife and his executor and after his wife's death the whole of the business to go to his executor if and when he married the testator's second daughter.

Held, (1) that there could be a valid bequest of profits of a business; (2) but the bequest to the widow was invalid as she was an heir and the other heirs did not consent; and (3) the condition about the trustee marrying the testator's second daughter was void and must be disregarded; and (4) therefore the executor took the business unconditionally and immediately; but (5) the testator could only validly dispose by will of one-third of his property; and (6) therefore the business must be valued and if its value amounted to one-third or less of the total net value of the testator's estate the executor would retain the whole but if the value exceeded one-third he must pay over the balance over one-third to be distributed with the rest of his estate in accordance with Mohammedan Law; (7) that with regard to the legacies of monthly payments to two of the heirs these were invalid as the other heirs did not consent.

ADJOURNED ORIGINATING SUMMONS.

K. A. Seth for plaintiff.

C. H. Smith for defendant.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Manning, J.—M. Mohamed Haniffa died at Singapore on the 10th May 1940. It is agreed that

he was a Mohammedan, a member of the Hanafi Sect, and that at the date of his death he was domiciled in India. It is further agreed that the succession to his estate must be regulated by Mohammedan Law. On the material before me I see no reason to come to any other conclusion than that the parties to this summons were justified in agreeing on these matters.

The deceased left a will dated the 20th April 1940. This summons has been taken out by his sole executor and trustee, Abdul Jabbar, to determine certain points in connection with this will. The first point arises in connection with clause 2 of the will, in which the deceased bequeathed monetary legacies to two of his daughters and to his brother. These legatees were heirs of the deceased according to Mohammedan Law, and according to that law an heir cannot take any benefit under a will unless the other heirs consent. They do not consent in this case. I decide that clause 2 of the will is invalid and of no effect.

Clause 4 of the will reads as follows:—

> "4. I direct my Trustee to continue and carry on the business of General Merchant known as A. Kadir M. Saiboo and Company now being carried on by me at No. 52 High Street Singapore and to divide the profits equally between my wife Hajarabeevi Ammal of No. 327 Noth Street, Karaipakam Enangudi and my executor Abdul Jabbar. After my wife's death the whole of the said business will go to my executor the said Abdul Jabbar if and when he marries my second daughter the said Alimabi Ammal."

There was an interesting argument by Mr. Smith, who appeared for the heirs. He contended that life estates could not be created by will and that consequently the bequests of profits in the business were invalid. He further argued that an estate in future could not be bequeathed by a will and that the bequest of the business to the executor on the widow's death was void.

Mr. Seth, who appeared for the executor, referred me *inter alia,* to *Wilson's* Anglo-Mohammedan Law, 6th edn., p. 308, Art. 277. There it is stated that a testator may bequeath the use or product of a thing. I have no doubt that this includes the profits in a business, and that the bequest of profits was valid, subject to what I have to say with regard to the widow's share.

With regard to the bequest of the business on the widow's death, Mr. Seth said that the authorities of any weight cited by Mr. Smith referred to gifts, and not to bequests. Mr. Smith relied on a statement in *Mulla,* 10th edn. p. 104, to support his contention re bequests. Mr. Seth said this work is not authoritative, in view of s. 29 of the Mohammedan Ordinance. He said the intention of the testator should be given effect to. On this point I think Mr. Smith is right. Right through Mohammedan Law there runs a distinct aversion to the creation of estates in future, the only notable exception being a gift to take place on the donor's death, and this is construed as a bequest.

I have referred to these arguments, but only briefly, because they do not affect my construction of clause 4. It is agreed that the bequest to the widow of half the profits of the business during her life cannot take effect. She is an heir, and the other heirs do not consent. It is agreed that according to the Sunni school, which is the branch of Mohammedan Law relevant to the testator's status, the condition as regards marriage is void. If one looks at clause 4, it is seen that its substantial effect is to give the business to the executor, subject to two conditions. The first condition is that he pays half the profits of the business to the widow during her life. The second is that he marries the testator's daughter Alimabi. The first condition is a bequest which the law does not recognise, as the other heirs do not consent. The second condition is void and may be disregarded. In these circumstances, neither condition being operative, the executor gets the business unconditionally, and if unconditionally, he must get it immediately.

The excutor is not an heir, he is a stranger. He cannot receive under the will more than one-third of the testator's property. The business must therefore be valued. It goes to the executor with all its assets and all its liabilities; these latter are not a charge on the rest of the estate. When it has been valued, if the value amounts to a third or less of the total net value, the executor may retain it all. If the value is over a third, he must pay in to the rest of the estate the sum in excess, to be distributed with the rest of the estate in accordance with Mohammedan Law.

These decisions dispose of the questions asked in paragraphs 2, 3, 4 and 5 of the summons.

Order accordingly.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.